FARAD CONTINUTION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

A.O.No.237 of 2006
with
C.A.No 306 of 2006

Office Notes,Office Memorandum of Coram appearence,Court's Orders & Directions and Registrar's Order	Court or Judge's Order

Mr.Anil Singh for Shah for appellant
Ms Geeta Joglekar for BMC

CORAM; A.M.KHANWILKAR J.

DATED l3.4.2006

P.C.

. Heard parties. Perused the relevant material on record. I see no reason to depart from the conclusions reached by the lower court in dismissing the notice of motion preferred by the appellant for interim reliefs during the pendency of the suit. The court below has rightly taken into account that the suit plot was reallotted final plot number being plot no.509 admeasuring 909.2 sq mts. The original owners have been paid the

compensation for the lesser area allocated to them during the final plotting. The final plot has been drawn in the year l994. Thereafter the land has been acquired by the Corporation. Consequently the land is now vested in the Corporation.

. The learned counsel for the appellant, however, contends that although Smt Rajani and two others were the original owners, the possession of the suit plot was with one Mr.Samuel,which fact has been recorded by the talathi in his order in the year l997. This argument does not commend to me. On consolidation proceedings interest of all concerned have been considered and decision was taken by the competent authority. It is not the case of the appellant that he has been put in possession before the consolidation scheme. But the appellant claims to have come in possession through said Samuel on execution of conveyance in May 2005. It is not in dispute that the said

deed is unregistered sale deed, inadmissible in evidence. Indeed, the appellant could have relied upon the said document for collateral purpose. However, there is nothing on record to show that said Samuel had any right at the relevant time to enable him to pass on such right in favour of the appellant. Suffice it to observe that the land has now been acquired by the corporation, same is vested in the corporation. Merely because the appellant claims to have come in possession of the land in 2005 does not mean that he is in lawful possession thereof. The court below has, in my opinion, rightly concluded that the appellant was not in settled possession, for which reason, no prima facie case was made out. Accepting that finding I have no hesitation in holding that the present appeal is devoid of any merits. Hence appeal as well as civil application are dismissed.

2. At this stage the learned counsel

for the appellant states that the respondent be directed to maintain status quo with regard to the suit property to enable him to take up the matter in appeal. This request is opposed by the corporation through its counsel. However, as the appellant intends to go in appeal before the Apex Court, the request for maintenance of status quo with regard to the suit property is reasonable one. In the circumstances, the parties are directed to maintain status quo with regard to the suit property for a period of 2 weeks from today.